

HOUSE BILL REPORT

HB 2226

As Reported by House Committee On:
Judiciary

Title: An act relating to a court's application of equitable principles in land use cases.

Brief Description: Regarding judicial application of equitable principles in land use cases.

Sponsors: Representatives Simpson and Williams.

Brief History:

Committee Activity:

Judiciary: 2/26/07, 2/27/07 [DP].

Brief Summary of Bill

- Provides that, under the Land Use Petition Act, a court is not required to apply the common law doctrine of balancing the equities if doing so would reward a land use applicant for proceeding under an unlawful land use decision.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Lantz, Chair; Goodman, Vice Chair; Flannigan, Kirby, Moeller, Pedersen and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

Staff: Trudes Tango (786-7384).

Background:

The Land Use Petition Act

The Land Use Petition Act (LUPA) was enacted to provide uniform, expedited judicial review of land use decisions made by counties, cities, and unincorporated towns. Land use decisions subject to judicial review under the LUPA are limited to: (a) applications for project permits or approvals that are required before real property can be improved, developed, modified, sold, transferred, or used; (b) interpretations regarding the application of specific requirements

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to specific property; and (c) enforcement by local jurisdictions of ordinances relating to particular real property.

Land use decisions that do not fall under the LUPA are approvals to use, vacate, or transfer streets, parks and other similar types of public property, approvals for area-wide rezones and annexations, and applications for business licenses. In addition, the LUPA does not apply to land use decisions that are subject to review by legislatively-created quasi-judicial bodies, such as the Shorelines Hearings Board, the Environmental and Land Use Hearings Board, and the Growth Management Hearings Board.

A person seeking review of a land use decision must file a petition in superior court and serve all parties within 21 days of the issuance of the land use decision. The parties must follow certain procedures within specified time frames that are meant to expedite the judicial process.

Generally, the court sets a hearing within a few months of the filing of the petition. The court may affirm or reverse the land use decision or remand it for modification or further proceedings.

Relief may be granted based on the following grounds: (a) the decision maker followed an unlawful procedure or failed to follow a required procedure; (b) the land use decision is erroneous in its interpretation or application of the law; (c) the land use decision is not supported by evidence; (d) the land use decision is outside the authority or jurisdiction of the decision maker; or (e) the land use decision violates the petitioner's constitutional rights.

Balancing the equities

The common law doctrine of balancing the equities sometimes appears in cases in which a plaintiff seeks injunctive relief (a court order prohibiting the defendant from doing a specified act or commanding the defendant to undo some wrong or injury done to the plaintiff).

Washington courts have considered the doctrine of balancing the equities in cases dealing with real property, such as where one party builds a structure that encroaches upon the other party's land or where a builder begins construction without proper approval or in violation of restrictive covenants.

Under the doctrine, the court, when considering whether to grant an injunction requiring the removal of a structure, weighs the hardship an injunction would cause the defendant/builder against the hardship that the plaintiffs would suffer if the injunction were denied.

Courts have held that the balancing of the equities doctrine is reserved for the innocent builder who proceeds without any knowledge of problems associated with the construction. "If a party takes a calculated risk by proceeding, despite notice that doing so violates the property rights of others, that party forfeits the right to a balancing of the equities." *Green v. Normandy Park*, 2007 Wash. App. LEXIS 171 (February 5, 2007). In *Green*, which was not a LUPA case, the property owners began building a house and garage without first getting approval from the neighborhood association and in violation of the neighborhood's restrictive covenants. The trial court issued an injunction against the owner/builders requiring demolition of the construction. The trial court found that the owner/builders had clear notice that they were

building their house and garage in violation of the covenants and were warned before construction began that they were required to comply with the covenants and submit their building plans to the association. The Washington Court of Appeals affirmed that portion of the trial court's ruling.

Summary of Bill:

A new section is added to the LUPA explicitly stating that a court is not required to apply the common law doctrine of balancing the equities if doing so would reward a land use applicant for proceeding under an unlawful land use decision. An applicant for a land use permit or approval who proceeds with construction after the permit or approval has been challenged under the LUPA but before the court issues its decision does so at the applicant's own risk.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill ensures that land use laws will be properly enforced. The bill is important to the integrity of land use ordinances in the state. Under the expedited procedures of the LUPA, builders have certainty and will not have to wait too long before the court issues its decision. In Chelan, Wal-Mart already completed construction within the time it took the court to decide. The court applied the balancing of the equities and allowed the store to open despite the zoning violations. Without the bill, there would be no process for enforcing land use laws because the harm to the builder is always going to outweigh the plaintiffs' interest in enforcing the land use laws. The balancing of the equities should apply only to innocent builders. That is the old rule and this bill will clarify that the old rule still applies in LUPA cases. Without the bill, the law will remain unclear under the LUPA.

(Opposed) None.

Persons Testifying: Kathy George, Gendler & Mann LLP.

Persons Signed In To Testify But Not Testifying: None.